# Brief and Argument of Defendant in Error.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906

## No. 350.

HOME SAVINGS BANK, PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

W. H. Bremner and M. H. Cohen,
*Attorneys for Defendants in Error.*

Service of the within Brief and Argument is hereby accepted and acknowledged this.....day of.....1906.

.....

.....

*Attorneys for Plaintiff in Error.*

## BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

### *Statement.*

The plaintiff in error is a corporation organized and existing under the laws of the State of Iowa, pertaining to savings banks. In the year 1902, the Assessor of the City of Des Moines made an assessment for taxation against the shares of stock of said bank, in accordance with the provisions of Section 1322 of the Code of Iowa. The plaintiff, in error, was the owner of government bonds of the United States to the amount of $32,675.00 and in determining the value of its shares of stock for taxation no deduction was made on account of said bonds. The plaintiff, in error, thereupon appeared before the City Council of the City of Des Moines, Iowa, sitting as a Board of Review in accordance with the provisions of the laws of Iowa, and filed a written complaint (Transcript, page 19), asking that the amount of its capital invested in government bonds be deducted in determining the valuation of the property to be assessed to it. The Board of Review refused to make the deduction and thereafter the plaintiff in error, appealed to the District Court of Iowa, in and for Polk County, complaining of the action of the Board of Review. Thereafter the said District Court dismissed said appeal (Transcript page 19). Thereafter and on the 21st day of March, 1904, the plaintiff, in error, duly appealed to the Supreme Court of Iowa, where the assessment was again sustained. (Transcript page 21.) To reverse this judgment of the Supreme Court of Iowa, the writ of error has been sued out in this case.

This case involves the validity of Section 1322 of the Code of 1897 of Iowa, which is as follows:

"Shares of stock of national banks shall be assessed to the individual stockholders at the place where the bank is located. Shares of stock of state and savings banks and loan and trust com-

panies shall be assessed to such banks and loan and trust companies and not to the individual stockholders. At the time the assessment is made, the officer of the national banks shall furnish the assessor with a list of all the stockholders and the number of shares owned by each, and he shall list to each stockholder under the head of corporation stock the total value of such shares. To aid the assessor in fixing the value of such shares, the corporations shall furnish him a verified statement of all the matters provided in the preceding section, which shall also show, separately, the amount of capital stock, and the surplus and undivided earnings, and the assessor, from such statement and other information he can obtain, including any statement furnished to and information obtained by the auditor of state, which shall be furnished him on request, shall fix the value of such stock, taking into account the capital, surplus and undivided earnings. In arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate, owned by them, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporations shall not be otherwise assessed."

## PROPOSITIONS INVOLVED.

### I.

*The form of the assessment.*

The assessment is not void merely because it was assessed in the wrong name.

*Weston & Co. vs. Cass Co.*, 69 Iowa, 147;
*First National Bank vs. Concord*, 59 N. H., 75.

The decision of the Supreme Court of Iowa as to the form of the assessment and failure to comply with the state statute in relation to the method of procedure is binding on the Supreme Court of the United States.

*Stanley vs. Supervisors of Albany*, 121 U. S., 535;
*Palmer vs. McMahon*, 133 U. S., 662.

Questions not raised in the lower court will not be considered on appeal.

*Sunley vs. Metropolitan Life Ins. Co.*, 105 N. W., 408 (Iowa);
*McCormick Harvester Co. vs. McCormick*, 103 N. W., 204 (Iowa);
*Stelpflug vs. Wolfe*, 102 N. W., 1130 (Iowa);
*Hamilton Mfg. Co. vs. Mass.*, 6 Wall., 632.

## II.

*Is Section 1322 of the Code of Iowa void because in contravention of the Constitution and statutes of the United States?*

The construction and meaning given to a statute of a state by the Supreme Court of such state is binding on the Supreme Court of the United States.

*Cleveland Trust Co. vs. Lander*, 184 U. S., 111;
*L. & N. R. R. vs. Ky.*, 183 U. S., 503-507.

Construction of Section 1322 of the Code of Iowa as determined by the Supreme Court of Iowa.

*German Am. Sav. Bank vs. Burlington*, 118 Iowa, 84;
*National State Bank vs. Burlington*, 119 Iowa, 696;
*First National Bank vs. Independence*, 123 Iowa, 482.

The state has the power to assess for taxation corporate shares of stock without deducting, in determining their value, the value of United States government bonds held by the corporation.

*Van Allen vs. Assessors*, 3 Wallace, 584;
*First National Bank vs. Farwell*, 10 Bissell, 270;
*People vs. Commissioners*, 4 Wallace, 244;
*National Bank vs. Miller*, 19 Federal R., 378.
*National Bank vs. Commonwealth*, 9 Wallace, 353;
*Cleveland Trust Co. vs. Lander*, 184 U. S., 111.

A tax on the shares of stock of a bank is not a tax on its capital stock.

*Van Allen vs. Assessors*, 3 Wallace, 573;
*Palmer vs. McMahon*, 135 U. S., 662;

*Cleveland Trust Co. vs. Lander,* 184 U. S., 111;
*German Am. Savings Bank vs. Burlington,* 118 Iowa, 84;
*First National Bank vs. Independence,* 123 Iowa, 482.

A bank may be required to pay the taxes on the shares of stock of its stockholders.

*Primghar State Bank vs. Rerick,* 96 Iowa, 238;
*German Am. Savings Bank vs. Burlington, supra;*
*National Bank vs. Commonwealth,* 9 Wallace, 353;
*First National Bank vs. Douglas Co.,* 3 Dillon, 330;
*Lionberger vs. Rouse,* 9 Wallace, 470.

The statute is not void because it does not provide for personal notice to the shareholders.

*National Bank vs. Dodge, Assessor,* 119 Fed., 57;
*Palmer vs. McMahon,* 133 U. S., 662;
*Merchants' and Mfg. Nat'l. Bank vs. Commonwealth,* 17 S. C. R., 829;
*St. Clara Co. vs. Southern Pac. R. Co.,* 8 U. S., Circuit Court of Appeals, 401.

Section 1370 of the Code of Iowa prescribes: "That the city or town council shall constitute the Board of Review for such city or town. The Board shall meet on the first Monday of April at the office of the city or town clerk and sit from day to day until its duties are completed, and shall adjust assessments for the city or town."

Section 1373 of the Code of Iowa provides: "Any person aggrieved by the action of the assessor in assessing his property may make oral or written complaint thereof to the Board of Review, which shall consist simply of a statement of the errors complained of, with such facts as may lead to their correction * * * and appeals may be taken from the action of the board with reference to such complaint to the District Court of the county in which said board holds its sessions. * * * The Court shall hear the appeal in equity and determine anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof, * * *"

## ARGUMENT.

### I.

*The form of the assessment made.*

The plaintiff, in error, attacks the form of the assessment, claiming the assessment as actually made was upon monies and credits and not upon shares of stock, as required by Section 1322. The Supreme Court of Iowa, however, has determined that the assessment was properly made under the provisions of Section 1322 of the Code, and its decision upon this point is binding upon this Court. As was stated by Mr. Chief Justice Fuller in the case of *Palmer vs. McMahon,* 133 U. S., page 662, on page 665 of the opinion:

"We are bound by the decision of the Court of Appeals of the state of New York adversely to the plaintiff, in error, as to failure to comply with the state statute in relation to the method of procedure, form of assessment, oath of assessors, etc."

Furthermore, the plaintiff, in error, was notified by the assessor before the convening of the City Council as a Board of Review that it was to be assessed upon corporation stock (Transcript page 15). The testimony of Jacob J. Beck, who was the deputy assessor, who made the assessment against the plaintiff, in error, is to the effect that the assessment was made upon the shares of the capital stock of the plaintiff in error (Transcript page 18). In addition to this, the plaintiff, in error, failed to make any complaint before the Board of Review as to the form of assessment. Its complaint before the Board of Review is set out on pages 13 and 14 of the Transcript, and only asks for a reduction on account of the government bonds held by it.

Section 1373 of the Code of Iowa, which is heretofore quoted, provides that upon appeal to the District Court from the action of the Board of Review, the Court shall hear and determine anew all questions arising before the board. In other words,

no question not raised before the Board of Review can afterwards be raised in the Courts of the state.

While it is true that cases in equity are triable *de novo* in the Supreme Court of Iowa, and that no assignment of errors is required under that name, yet by Rule 54 of the Supreme Court of Iowa it is provided as follows:

"Brief of appellant shall contain a short and clear statement disclosing; first, the nature of the action; second, what the issues were; third, * * *; fourth, the errors relied upon for a reversal; fifth, * * * No alleged error or point not contained in this statement of points shall be raised afterwards either by reply brief, or any oral or printed argument, or on petition for a rehearing."

The Supreme Court of Iowa has repeatedly held that it would not consider any point not raised in the brief and argument.

In the case of *Sunley vs. Metropolitan Life Insurance Co.*, 105 N. W., 403, the Supreme Court of Iowa said:

"It is a plain requirement of our rules that the errors relied upon shall be specifically pointed out and where this is not done we will not hold the case and search the record through for ourselves to ascertain if any error was committed."

No question was raised before the Supreme Court of Iowa except questions pertaining to the validity of Section 1322 of the Code of Iowa. (Transcript page 20.) The assessment was treated in all respects in the Supreme Court of Iowa as though made properly under the provisions of Section 1322. The same brief and argument was filed in the Supreme Court in this case and in the case of the *Des Moines Savings Bank vs. The City of Des Moines* and the *People's Savings Bank vs. The City of Des Moines*, and in the statement of the case contained in that argument, it is said:

"Stating it broadly, the question presented in each of these cases is whether Section 1322 of the Code, as construed in the cases to which we have referred, contravenes the provisions of the federal statutes and constitution touching the taxation of bonds of the United States. Each case presents the same funda-

mental question; and because of its fundamental character, a detailed statement of the case is unnecessary."

This Court will not consider questions which are not raised in the Court from which the case comes.

As stated in the case of *Hamilton Manufacturing Co. vs. Massachusetts*, 6 Wallace, 632:

"Questions not decided in the state Court because not raised and presented by the complaining party will not be re-examined in this Court on a writ of error sued out under the 25th section of the Judiciary Act. Apart from the question of jurisdiction, it is necessary that it shall appear that the question presented for decision in this Court was raised in the state Court, and that the decision of the state Court was given as required in that section. Clear and necessary intendment that the question was raised and must have been decided as claimed, in order to have induced the judgment, is sufficient, but it is not sufficient to show that such a question might have arisen and been applicable to the case, unless it appears in the record that it did arise and was applied by the state Court in disposing of the controversy."

Even if it be true that the assessment against the bank was made on the assessment roll against monies and credits or corporation stock, the assessment would not be void merely because made in the wrong name. The most that could be said would be that it was voidable, and if the plaintiff was prejudiced, it should have made objections as to the form before the Board of Equalization and before the Supreme Court of Iowa, and having failed to do that, it has waived its right to make any objection to the assessment on that ground.

In the case of *Weston vs. Cass County*, 69 Iowa, 147, nursery stock was assessed as personal property and the Court said:

"The nursery stock was not personal property; it was a part of the realty. The assessor should have made but one estimate of the land and nursery stock. It was error to make separate assessments, but we are unable to see how the plaintiffs were prejudiced by the error. The rate of taxation on real and personal property is the same."

The Court further said: "If there was any object in making the correction, application should have been made to the Board of Equalization."

In the case of the *First National Bank vs. Concord,* 59 N. H., 75, a question analagous to the one under consideration was raised and the Court said:

"A tax assessed against a national bank for money on hand at interest or deposit will not be abated by the Court on appeal because the words 'surplus capital' used in the statute were not employed by the assessor."

It follows then that the question of whether the assessment was made in proper form is not before this Court, and it is to be treated as an assessment made in proper form under Section 1322 of the Code of Iowa.

## II.

*Is Section 1322 of the Code of Iowa void because in contravention of the Constitution and statutes of the United States?*

*The construction and meaning given to a statute of a state by the Supreme Court of such state is binding on the Supreme Court of the United States.*

In the case of *L. & N. R. R. Co. vs. Kentucky,* 183 U. S., 503, it is stated on page 508 of the opinion:

"This Court must accept the meaning of the state enactments to be found in them by the state Court."

And in the case of *Cleveland Trust Co. vs. Lander,* reported in the 184 U. S., page 111, on page 115 of the opinion it is said:

"What the Constitution of the state of Ohio requires or what the statutes of the state require as to taxation must be left to be decided by the Supreme Court of the state, and whether that Court has decided logically or illogically that a tax authorized by the laws of the United States on the shares of the company satisfies the Constitution of the state as a tax on the corporation, it is not open to our review or objection."

*The construction of Section 1322 of the Code of Iowa as determined by the Supreme Court of Iowa.*

The case of the *German American Savings Bank of Burlington vs. Council of the City of Burlington,* reported in the 118 Iowa,

at page 84, is the first case in which the Supreme Court of Iowa had occasion to pass upon Section 1322 of the Code. In that case, the City Council of the City of Burlington, acting as a Board of Review, assessed to the plaintiff the shares of stock of the bank after adding thereto the surplus and profits in its hands, and after deducting therefrom the value of the real estate owned by the bank. The bank at that time held government bonds of the face value of $100,000.00, which were held as a part of its capital stock. The bank made the claim before the Board of Review and before the District Court that it was entitled to have these bonds deducted from the amount of its assessment because not taxable. The District Court upheld this contention, and the case was appealed to the Supreme Court of Iowa. The material part of the opinion of the Supreme Court is as follows:

"Section 1322 of the Code provides that 'shares of stock of state and savings banks and loan and trust companies shall be assessed to such banks and loan and trust companies, and not to the individual stockholders.' The contention of the appellee that the assessment in this case was in fact upon the capital of the bank, instead of an assessment of the shares of stock, is not sustained by the record. On the other hand, it appears clearly to us that the council intended to assess the shares of stock to the bank as provided in the section referred to, and that the assessment was so made in fact. There is a well-defined and well-recognized distinction between the capital of a bank and the shares of its stock. Indeed, we do not understand that this proposition is seriously questioned by the appellee. *First National Bank of Louisville vs. Kentucky,* 9 Wall. 358 (19 L. Ed. 701); *Farrington vs. Tennessee,* 95 U. S., 686 (24 L. Ed. 558). The shares of stock having been assessed to the bank as provided by law, instead of to the stockholders, may the bank deduct from such assessment the United States bonds held by it as a part of its capital, because of their exemption from taxation? The negative of this proposition is well settled by the highest authority. The tax on the shares of stock of a bank is not a tax on its capital. *Van Allen vs. Assessors,* 3 Wall., 573 (18 L. Ed. 229); *Farrington vs. Tennessee, supra; Railroad Co. vs. Morrow,* (Tenn.), 11 S. W. Rep., 348 (2 L. R. A. 853); *Hubbard vs. Board,* 23 Iowa, 130; *Bank vs. Rerick,* 96 Iowa, 238. See also note in *McHenry vs. Downer* (Cal.), 45 L. R. A., 737 (s. c. 47 Pac.

Rep. 779), on the subject generally. The tax in this case, not being on the capital of the bank, but upon the shares of stock held by the individuals, the bank had no right to deduct therefrom its United States bonds. *First National Bank of Louisville vs. Kentucky, supra; Palmer vs. McMahon,* 133 U. S. 666, 10 (Sup. Ct. Rep. 324, 33 L. Ed. 772); *Trust Co. vs. Lander* (Ohio), 56 N. E. Rep. 1036, and *Trust Co. vs. Lander* (22 Sup. Ct. Rep. 394, 46 L. Ed. 456). And it is in this respect that the case at bar is distinguished from *Ottumwa Sav. Bank vs. City of Ottumwa,* 95 Iowa, 176, and *State Exch. Bank of Parkersburg vs. Town of Parkersburg,* 112 Iowa, 104, in both of which cases the question of the taxation of the capital of the bank was alone involved. Whether, under this statute, the capital may be taxed as well as the shares of stock, we do not determine, for no such question is before us, no attempt having been made to tax the capital of the bank. The statute under consideration is simply an enlargement of Chapter 39 of the acts of the 23rd General Assembly, and is in no sense different therefrom in so far as it applies to banks organized under the laws of this state. Under that act, it was held in *Bank vs. Rerick,* 96 Iowa, 238, that banks designated therein were liable for the tax assessed to them on the shares of stock held by individuals, and it is said in answer to the contention that the bank, under such circumstances, would be paying taxes on property that it did not own; that 'as the capital of a state bank is really owned by the stockholders, and as it is reduced by the amount paid for taxes, its value is reduced by a sum equal to that paid, and the shareholders do, in effect, pay the taxes.' This proposition cannot be successfully controverted, for the reason that the bank is owned by its stockholders, and if it is making money and is paying dividends or reserving a surplus, the payment of the tax by the corporation instead of by the individual stockholder, affects the value of the stock exactly the same; and this is equally true if the bank is not prosperous. This method of assessing and taxing the shares of stock of banks was undoubtedly adopted for convenience, and for the purpose of reaching valuable property which might otherwise escape its just share of the public burdens, and does not, in our judgment, compel payment of the tax by those who do not own the property."

This decision followed the rule laid down in *Primghar State Bank vs. Rerick,* 96 Iowa, 238, which case was decided under Section 1 of Chapter 39 of the Acts of the 23d General Assembly, which section provided:

"That all shares of the capital stock of banking associations organized under the general incorporation laws of the state known as state or commercial banks, shall be assessed to such banks in the city or town wherein located, and not to the individual shareholders."

The Supreme Court of Iowa in the above quoted opinion construes Section 1322 of the Iowa Code to mean that it is the shares of stock of savings banks which are to be assessed, and not the capital stock. It recognizes the distinction between the shares of stock and capital stock, and this Court under the rule heretofore suggested must treat this section of the Code of Iowa as authorizing an assessment against shares of stock. The Supreme Court of Iowa further determined that the payment of the taxes assessed against the shares of stock of the bank was in effect a payment by the shareholders, inasmuch as the property of the bank was the property of the shareholders. It was not decided, nor did the Supreme Court of Iowa say, either in this opinion or in the opinion in the case of *Primghar State Bank vs. Rerick,* as claimed by the plaintiff in error, that the tax was, in effect, a tax upon the property owned by the bank as a corporation and that therefore the owner of the property paid the tax. The plaintiff in error, has misconstrued the opinion. What the Supreme Court of Iowa said in the Primghar State Bank case was:

"As the capital of a state bank is really owned by the stockholders, and as it is reduced by the amount paid for taxes, its value is reduced by a sum equal to that paid, and the shareholders do, in effect, pay the taxes."

This language was quoted and approved in the case of the *German American Savings Bank vs. Burlington, supra.* The Court further determined that a tax upon shares of stock without deducting, in ascertaining the value thereof, the bank's holdings of government bonds is not a tax upon the bonds.

*The state has the power to assess for taxation corporate shares of stock without deducting, in determining their value, the value of United States government bonds held by the corporation.*

*A tax on the shares of stock of a bank is not a tax on its capital stock.*

It has long been the established rule, not only for the state Courts, but the Federal Courts as well, that, in fixing the value of shares of stock for the purpose of taxation, government bonds owned by the bank need not be deducted. The earliest case on that proposition is the case of *Van Allen vs. Assessors,* 3 Wallace, 584. The Court in that case said:

"The main and important question involved, and the one which has been argued at length and with eminent ability, is whether the state possesses the power to authorize the taxation of the shares of stock of these national banks in the hands of the stockholders, whose capital is wholly invested in stock and bonds of the United States?

"The Court is of the opinion that this power is possessed by the state, and that it is due to the several cases which have been so fully and satisfactorily argued before us at this term, as well as to the public interest involved, that the question should be finally disposed of.

"The suggestion is that it is a tax by the state upon the bonds of the government which constitutes the capital of the bank and which this Court has heretofore decided to be illegal. But this suggestion is scarcely well founded. * * * The tax is the condition for the new rights and privileges conferred upon these associations.

"But, in addition to this view, the tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal, and within the powers conferred upon it by the charter, and for the purposes for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own * * *.

"The interest of the stockholder entitled him to participate in the net profits earned by the bank in the employment of its capital, during the existence of its charter, in proportion to the number of his shares; and upon its dissolution or termination, to his proportion of the property that may remain of the corporation after the payment of its debts. This is a distinct independent interest or property, held by the share holder like any other property that may belong to him. Now, it is this interest

which the act of Congress has left subject to taxation by the states, under the limitations prescribed."

The principle enunciated in the above case has since been reaffirmed by the Supreme Court of the United States and followed by later decisions.

In the case of the *First National Bank vs. Farwell,* 10 Bissell, 270 (U. S. Circuit Court), the Court said:

"This is a bill filed by the plaintiff to restrain by injunction the collection of a tax by the defendant, for the reason, as alleged, that this provision of the statute has been violated by the assessment of the shares of stock of the plaintiff in this case. It is stated in the bill that no allowance was made by the assessors for the amount of capital and surplus invested in government bonds. This is answered, showing that such allowance need not be made by the case of *Van Allen vs. Assessors,* and the case of *People vs. Commissioners,* 4 Wallace, 244."

In *Exchange National Bank vs. Miller,* 19 Fed. Rep., 379, it is said:

"Unless the taxation on the shares in national banks is indirectly a tax on the property of the bank, there is no discrimination in favor of the individual banker and the unincorporated bank. But in *Van Allen vs. Assessors,* 3 Wallace, 573, the Supreme Court of the United States decided that a tax on the shares is not a tax on the capital of the bank. They state as a familiar law that the corporation is the legal owner of all of the property of the bank, real and personal, and that the interest of the shareholders is a distinct independent interest or property, held by the shareholder like any other property that may belong to him, and that it is this interest which the act of Congress has left subject to taxation by the states. Chief Justice Chase, for himself and Associate Justices Wayne and Swayne, in a dissenting opinion, argued with great power that taxation on shares in national banks, without reference to the amount of their capital invested in bonds of the United States, was actual, though indirect, taxation of the bonds, but the holding of the majority of the Court was affirmed in *People vs. Commissioners,* 4 Wall., 244, and has since remained as settled law. So that the dissenting opinion of the Chief Justice only strengthens the authority of *Van Allen vs. Assessors.*"

The plaintiff in error, in its argument would lead one to believe that the Federal statutes authorize the state in case of national

banks to assess government bonds owned by said national banks, and predicates its claim on Section 5219 of the Revised Statutes of the United States. The section just cited provides as follows:

"Nothing shall prevent all the shares of any association from being included in the valuation of personal property of the owner or holder of such shares in assessing taxes imposed by authority of the state within which the association is located, but the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by non-residents of any state shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either state, county or municipal taxes to the same extent according to its value as other real property taxed."

The above section does not confer power on the state to tax United States Bonds, but only confers power on the state to tax the shares of stock of such banks. Without this section or statute the state would be without power to tax the shares of stock in national banks. No Federal authority is required to authorize the state to tax the shares of stock of its own banks, such as savings or state banks. Savings banks are creatures of the state, and are subject to all conditions imposed upon them by the state so long as there is no class discrimination, and the state has the power to require the banks to pay the tax on its shares of stock.

As suggested by Mr. Justice McKenna, in the opinion in the case of *Cleveland Trust Co. vs. Lander,* 184 U. S., 111, on page 113:

"The argument of the plaintiff in error claims greater immunity from taxation for the shares of the trust company than Section 5219 of the Revised Statutes of the United States gives to shares in national banks."

It requires but a mere statement of this proposition for it to be denied.

State and savings banks are creatures of the state and are sub-

ject to all of the conditions imposed upon them by the state. It has the power to compel them to contribute towards the support of the state, or the sub-divisions thereof, and has the right to say how the contribution shall be paid. It has the power to say how much taxes it shall pay, and in what manner they shall be paid, whether on the capital stock or shares of stock, or a per cent on its deposits, or in any other manner the legislature may think best. In respect to taxes, its power is absolute, unless prohibited by the Constitution of the United States. If the tax is oppressive or unjust, the legislature has the right to remedy the evil, if one exists, and not the courts. The province of the Court is to interpret the statute and make known the intent of the legislature, and when the highest Court of the state has placed a construction on a statute, the interpretation so given, whether logical or not, is the law, and if the effect of such construction works a hardship or burden on the corporation, it must appeal to the legislature for relief.

In the Delaware Railroad Tax case, reported in the 18 Wallace, page 206, 231, the Court said:

"The state may impose taxes upon the corporation as an entity existing under its laws as well as upon the capital stock of the corporation or its separate corporate property. And the manner in which its value shall be assessed and the rate of taxation, however arbitrary or capricious, are mere matters of legislative discretion. It is not for us to suggest in any case that a more equitable mode of assessment or rate of taxation might be adopted than are prescribed by the legislature of the state."

In the case of *Society for Savings vs. Coite,* 6 Wallace, 594. the plaintiff was required to pay a certain tax on its deposits and a certain portion of its deposits were invested in United States bonds, and for that reason they attempted to have the amount of deposits invested in government bonds deducted from the amount on which the tax was to be assessed, on the ground that government bonds were exempt from taxation, but the Court held that it was a franchise tax and that the Society was not exempt

from taxation to the extent of the deposits invested in government bonds.

It rests with the legislature of Iowa to say what conditions shall be imposed upon the right of a savings bank to do business in Iowa, and if it chooses to require as one of those conditions that it pay the taxes assessed against its shares of stock, it has the right to so do, and the Courts will not interfere with the exercise of that right.

*A bank may be required to pay the taxes on the shares of stock of its stockholders.*

A state law which requires a bank to pay the tax which is rightfully laid on the shares is valid. In the case of the *National Bank vs. Commonwealth,* reported in 9 Wallace, 353 the Court said:

"It is strongly urged that it is to be deemed a tax on the capital of the bank because the law required the officers of the bank to pay this tax on the shares of its stockholders. Whether the state has the right to do this we will presently consider, but the fact that it has attempted to do it does not prove that the tax is anything else than a tax on these shares. It has been the practice of many of the states for a long time to reqiure of its corporations thus to pay the tax levied on their shareholders. It is the common, if not the only, mode of doing this in all the New England states, and in several of them the portion of this tax which should properly go as the shareholder's contribution to local or municipal taxation is thus collected by the state of the bank and paid over to the local municipal authorities. * * * If the state cannot require of the bank to pay the tax on the shares of its stock, it must be because of the Constitution of the United States or some act of Congress which forbids it. There is certainly no express provision of the Constitution on the subject."

The Court further states: "It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional. We do not see the remotest probability in their being required to pay the tax which their stockholders owe to the state for the shares of their capital stock, when the law of the Federal government authorized the tax."

As was stated by the Supreme Court of Iowa in the case of the *German American Savings Bank vs. Burlington, supra:*

"The statute under consideration is simply an enlargement of Chapter 39 of the Act of the 23d General Assembly, and is in no sense different therefrom in so far as it applies to banks organized under the laws of this state. Under that act it was held in *Bank vs. Rerick*, 96 Iowa, 238, that banks designated therein were liable for the tax assessed to them on the shares of stock held by individuals, and it is said in answer to the contention that the bank, under such circumstances, would be paying taxes on property that it did not own; that, 'As the capital of a state bank is really owned by the stockholders, and as it is reduced by the amount paid for taxes, its value is reduced by a sum equal to that paid, and the shareholders do, in effect, pay the taxes.' This proposition cannot be successfully controverted, for the reason that the bank is owned by its stockholders, and if it is making money and is paying dividends, and reserving a surplus, the payment of the tax by the corporation, instead of by the individual stockholders, affects the value of the stock exactly the same; and this is equally true if the bank is not prosperous. This method of assessing and taxing the shares of stock of banks was undoubtedly adopted for convenience, and for the purpose of reaching valuable property which might otherwise escape its just share of the public burdens, and does not, in our judgment, compel payment of the tax by those who do not own the property."

It is the latter part of this expression of the Supreme Court of Iowa that the plaintiff in error has construed into a statement that the bank owned the property which was assessed under Section 1322 of the Code, but a reading of the whole opinion shows that what the Supreme Court of Iowa intended was that the owners of the shares of stock in effect paid the taxes. As a general proposition, a state may provide for the assessment of savings bank capital as well as other property in such mode as it may deem most convenient and effective for the collection of its revenue.

*The statute is not void because it does not provide for personal notice to the shareholders.*

The plaintiff in error attacks the validity of the statute in question (Section 1322 of the Code), and contends that there is a lack of due process of law in that it does not provide for personal notice to the stockholders of the proceedings by which the assessment of their shares is to be made. This question was raised and

determined in the case of *Nevada National Bank vs. Dodge, Assessor,* reported in the 119 Federal Reporter, 57. In that case the law did not require any notice to be given to the shareholders, but the statute authorizing the assessment was held valid. The statute in that case provided as follows:

"The assessor charged by law with the assessment of said shares shall within ten days after he has made such assessment give written notice to each national banking association of such assessment of the shares of its respective shareholders, and no personal or other notice to such shareholders of such assessment shall be necessary for the purpose of this act."

The Court, in rendering the opinion, stated as follows:

"We are unable to assent to the proposition that the notice thus provided for is insufficient, when considered in connection with other sections of the Code of the state, which provide for a Board of Equalization, with power to hear complaints respecting the justice of any assessment, and also prescribe the time and place when and where such complaint may be heard. The shares of national banking associations are assessed under a general law, of which the stockholders must take notice; and the time and place when and where a stockholder may appear for the purpose of applying for a reduction of the valuation placed upon his property is fixed by general law, of which he must also take notice. This we think, under all the authorities, sufficient notice of the proceedings for the assessment and taxation of property."

In the case of *Palmer vs. McMahon,* reported in the 133 U. S., 662, the Court said:

"The power to tax belongs exclusively to the legislative branch of the government; and when the law provides for a mode of confirming or contesting the charge imposed with such notice to the person as is appropriate to the nature of the case, the assessment cannot be said to deprive the owner of his property without due process of law."

In the case of *Merchants' & Manfg. National Bank vs. Commonwealth,* reported in the 17 Supreme Court Rep., 829, Justice Gray said:

"A final objection is that there is a lack of due process of law in that the property of the stockholders is subject to an *ad valorem* tax without an opportunity being given to them to be heard as

to the value. It is true the statute contemplates no personal notice to the shareholders, but that has never been considered essential to due process of law in respect to taxation."

The Court further said: "And a notice to all property holders of the time and place at which the assessment is to be made is all that 'due process' requires in respect to the matter of notice in the proceedings."

In the case of *Santa Clara Co. vs. Southern Pac. R. Co.*, reported in the 8 U. S., Circuit Court of Appeals, 401, the Court said:

"The great preponderance of authority is to the effect that if a statute, of which all persons are bound to take notice, specifies the day and place when the Board of Equalization shall meet, a person affected by its action cannot complain that such action was without notice to him. And on the same principle, a published general notice of the meeting of the Board of Equalization is sufficient to give authority to act upon individuals."

Section 1370 of the Code of Iowa provides that the City Council shall constitute a local Board of Review for the city, and provides that the board shall meet on the first Monday in April at the office of the township, city or town clerk or recorder, and sit from day to day until its duties are completed, and shall adjust assessments for the city.

Section 1373 of the Code of Iowa provides that any person aggrieved by the action of the assessor in assessing his property may make oral or written complaint thereof to the Board of Review, and further provides for appeals from the action of the Board of Review upon such written complaints. It surely cannot be contended that under the statutes of Iowa a person has not ample opportunity to complain of any assessment which in any manner affects him and to have the assessment reviewed.

It is also claimed by the plaintiff in error that shareholders in savings banks are denied equal protection of the laws, inasmuch as they are not allowed to deduct their debts from the valuation of their shares of stock, while shareholders in national banks are. The right of deduction is a statutory, and not a Constitutional,

right. In reference to this question, the Supheme Court of Iowa, in the case of *Primghar State Bank vs. Rerick*, 96 Iowa, 238, says:

"If it be true that shareholders of the capital stock of banks which fall within the provisions of the act under consideration cannot deduct their debts from the amount of their stock for the purposes of taxation, is the act valid? We are of the opinion that it is. The fact that national banks and banks organized under the general incorporation laws of this state transact similar kinds of business does not show that they must be taxed according to the same plan. National banks are organized and exist by virtue of Acts of Congress. They are instruments of the general government, designed to aid in the administration of a branch of the public service. The states cannot exercise control over them, excepting with the consent of Congress, expressed or implied, and the power of the states to tax them is derived from that source. *Bank vs. Dearing*, 91 U. S., 29; *First National Bank of Albia vs. City Council of Albia, supra.* They are subject to regulations and limitations of power which have no application to state banks, and constitute a class of corporations which may be properly subjected to a plan of taxation different from that applied to state banks. The latter constitute another class, with distinct powers and privileges, and subject to different restrictions, and may properly be subject to a plan of taxation applicable only to that and similar classes."

No one has any right to deduct from the amount for which he is assessed the amount of his debts, except by virtue of a statute, and the Constitution is satisfied if deductions are allowed alike to all persons who fall within the same class.

W. H. BREMNER,
M. H. COHEN,
*Attorneys for Defendants in Error.*